

Claimant, a manager and stocker in the frozen foods department for respondent, alleges an accidental injury on April 23, 2003. Claimant testified, both in a deposition

on November 17, 2003, and at the preliminary hearing on February 4, 2004, regarding the incidents leading up to her alleged injury. Additionally, the E-1 filed by claimant discusses an incident "lifting boxes" on April 23, 2003. At preliminary hearing, claimant discussed lifting a 50-pound box, which caused a severe, knife-like pain in her back, causing her legs to buckle and causing claimant to collapse to the floor. The testimony provided by claimant at the deposition conflicts with the testimony provided by claimant at the preliminary hearing. Whether claimant had preexisting back problems, whether claimant discussed those preexisting back problems with her supervisors and whether claimant advised her various doctors of those preexisting back problems are all in conflict between the two testimonies. Additionally, whether claimant's condition progressed or worsened over a period of time is in contrast to the specific onset testimony involving the 50-pound box.

Moreover, the medical records contemporaneous with claimant's injury contain no indication of a work-related accident. The Shawnee Mission Medical Center emergency room records, created on April 24, 2003 (the day after the alleged accident), fail to mention any work-related cause for her hospitalization. Claimant was hospitalized for two days for treatment of kidney stones at that time. After her discharge, claimant obtained additional treatment from her gynecologist, Leah D. Ridgway, M.D., again making no mention of any work-related injury or work-related connection to her complaints. Claimant was readmitted to Shawnee Mission Medical Center on May 12, 2003, at which time she was diagnosed with an ovarian cyst, for which she underwent surgery. The first mention in the medical records of a work-related connection to claimant's back pain occurred on July 25, 2003, which, coincidentally, is the same date claimant first approached respondent regarding an alleged accident with back pain on April 23, 2003.

Three of respondent representatives testified in this matter by deposition. Paul Doss, Jr. (the store director), Greg Weese (the service manager) and Susan Long (a coworker) all testified regarding incidents leading up to claimant's allegations of a work-related injury. Both Mr. Weese and Ms. Long acknowledged signing a July 25, 2003 note prepared by claimant regarding the fact that claimant experienced low back pain while working on April 23, 2003. There is, however, no indication in the note that claimant suffered a specific onset of pain while lifting a box. Additionally, both Mr. Weese and Ms. Long testified that they were asked by claimant to sign the note for her doctor's records. Both also testified claimant never alleged any work-related injury at the time the note was presented.

The first indication that claimant was alleging a specific work-related accident occurred on July 31, 2003. This was according to the testimony of Mr. Weese and Mr. Doss.

Additionally, Mr. Doss testified that on April 23, 2003, the alleged date of accident, claimant worked from 7:45 a.m. to 1:31 p.m., which was longer than her normal part-time hours. There was no indication that claimant had to leave work at that time as a result of

an injury. Claimant alleged that she left work at approximately 9:00 a.m. on the date of accident, after speaking to Mr. Weese about the back pain. However, claimant's time records on that date conflict with claimant's allegations of a specific work-related injury.

Finally, there is contained in Daniel L. Bruning, M.D.'s June 30, 2003 record an indication that claimant was doing considerably better with her back pain until she "got plastered by a wave in Cancun this last week" which substantially increased the back pain at that time. Claimant denies the incident occurred and denies providing this information to Dr. Bruning, but is unable to explain the information in Dr. Bruning's medical reports.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, multiple medical records created either contemporaneous with claimant's alleged injury or shortly thereafter fail to support claimant's allegations of a work-related injury. The Shawnee Mission Medical Center emergency room records contain no indication of a work-related injury. Additionally, claimant's records with her OB/GYN mention no job-related injury and her records of April 25, 2003, with her family doctor, Bradley Palmer, D.O., also fail to mention any work-related connection to her back complaints. The Saint Luke's South Hospital emergency room records of May 28, 2003, state that there is no work injury history. Multiple Saint Luke's South Hospital examinations fail to mention a work-related connection to claimant's complaints.

The Board finds that claimant has failed to prove that she suffered accidental injury on the date alleged and that her accidental injury arose out of and in the course of her employment.

K.S.A. 44-520 requires that notice be provided to respondent within ten days of the date of accident or, if just cause is shown, then the notice time limit may be extended to 75 days from the date of accident. Claimant alleges an accidental injury on April 23, 2003. The first indication of a work-related connection is July 25, 2003, when she provided the note to Mr. Doss and Ms. Long. The first date respondent acknowledges receipt of any type of notice of a work-related injury is July 31, 2003. Both dates exceed the 75-day limitation set forth in K.S.A. 44-520.

The Board finds that claimant has failed to prove that she provided timely notice of accident within ten days, as is required by K.S.A. 44-520. The Board additionally finds that there was no just cause to extend the time limit in this matter to 75 days. Finally, the Board notes that even if just cause were shown, the notice provided respondent on July 25 and July 31, 2003, exceeds the 75-day limitation.

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

For the above reasons, the Board finds that the Order of the Administrative Law Judge granting claimant benefits should be reversed and claimant should be denied benefits for the alleged injuries of April 23, 2003.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated February 6, 2004, should be, and is hereby, reversed and claimant is denied benefits in the above matter for having failed to prove she suffered accidental injury arising out of and in the course of employment and timely notice.

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
H. Wayne Powers, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director